**PUBLIC PROSECUTOR**

**v.**

**ADETUNJI ADELEYE SULE**

HIGH COURT, ALOR SETAR
TUAN MOHD. NOOR BIN HJ. ABDULLAH JC
[CRIMINAL TRIAL CASE NO. 47-9-91]
6 JUNE 1993

***DANGEROUS DRUGS: Charge of trafficking in heroin - Whether defence of accused had on a balance of probability rebutted the statutory presumptions of knowledge and possession of the drugs.***

The accused was charged with trafficking in heroin contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952. The accused was in fact acquitted and discharged at the close of the case for the prosecution. On appeal the accused was ordered to enter upon his defence. In the light of the defence the Court was required to consider whether the accused had successfully rebutted the statutory presumptions of knowledge and possession of the drugs in question.

**Held:**

**[1]** The facts leading to the accused possession of the trunk in which the drugs were found, his subsequent conduct of putting his suit in the trunk and putting the key to the trunk together with his bunch of keys, which facts were borne out by the prosecution case, negatived the proposition of the prosecution that the conduct and behaviour of the accused was a dramatization and a ploy to beguile his guilt, premeditated and conceived at Bangkok.

**[2]** The second cautioned statement made by the accused was inadmissible as its making appeared to have been caused by inducement both from the recording officer and another customs officer present throughout the session.

**[3]** The accused evidence in Court was impeccably on all fours with his first cautioned statement. His answers to the 58 questions in the cautioned statement did not depart in any material particular from his statement in Court.

**[4]** It was more probable that the accused did not know of the drugs concealed in the sealed bottom of the trunk. The accused had rebutted the presumptions of knowledge and possession of the drugs on a balance of probabilities.

*[Accused acquitted and discharged of the charge. The accused personal effects ordered to be returned to him. The trunk and drugs ordered to be destroyed].*

*For the prosecution - Zainal Abidin bin Kamaruddin, DPP*

*For the accused - M.M. Athimulan; M/s. Kumar, Sitham & Co.*

**JUDGMENT**

**Mohd. Noor bin Hj. Abdullah JC:**

At an earlier hearing of this case I had acquitted and discharged the Accused at the close of the case for the prosecution. The public prosecutor appealed and the Supreme Court allowed the appeal and ordered me to call for the defence of the Accused. I accordingly called upon the Accused to enter his defence.

In his defence the Accused narrated his journey beginning at Lagos on 1 October 1990 and arriving at Singapore where he stayed for three days and then onward to Bangkok where he stayed for two weeks and then proceeding by bus to Haadyai where he failed to get a flight to Singapore and instead travelled by bus through Malaysia to Singapore when at the Bukit Kayu Hitam entry checkpoint the Accused was checked by customs officers and found to carry drugs and there concluded his fateful journey in a lock-up at Jitra Police Station.

He claimed that his journey was to Singapore and it was for the purpose of buying and trading in children's garments but he found them too expensive although they were of superior quality. He was told by a Nigerian whom he met in Singapore that cheap children's garments were available in Bangkok and so he decided to go to Bangkok. He found them cheap in Bangkok but they were of inferior quality and probably not saleable back home. He then decided to buy the more expensive ones in Singapore and to return there.

He then explained his difficulty of getting a flight back to Singapore. He wanted to depart on 16 October 1990 but the flight from Bangkok to Singapore was full. He checked again the next day 17 October 1990. Again the flight was full. The travel agent told him to travel by bus to Haadyai and there to take a flight to Singapore. He agreed and was issued an unconfirmed ticket from Haadyai to Singapore. On 19 October 1990 he was in Haadyai and he was

told the flight to Singapore was full. He asked for a refund and he was told to collect it in two weeks. It would cost him more money to stay back for the refund and so he decided to take a bus to Singapore. That was on the morning of 20 October 1990.

At Bukit Kayu Hitam the Accused narrated the events that took place there and they were by and large substantially the same as narrated by the prosecution witnesses which were briefly as follows:

1. The Accused slotted the trunk into the scanning machine and then showed the ceramic items in the trunk to the customs officer who imposed a refundable RM250 deposit.
2. The trunk was cleared and sealed but another customs officer requested for another checking by a dog unit. The dog sniffed the trunk and reacted positively indicating the presence of drugs in the trunk. An officer punctured a hole in the trunk and a powdery substances puffed out from the hole. The substance was found to be heroin.
3. The customs officers arrested the Accused and detained him. The next day the Accused gave a cautioned statement to a customs officer.

The Accused swore he did not know of the drugs concealed in the trunk. He told the customs officer that he did not know of the drugs found in the trunk. The Accused explained in Court how he came by the trunk. It was on 12 October 1990 his 7th day in Bangkok when he met an old friend named Sola Anifowoshe while shopping at PATA Departmental Store. He visited Sola on 14 October 1990 at the First Hotel. Sola told him that he was going back to Lagos on 15 October 1990. On 17 October 1990 Accused was surprised to see Sola who came to his hotel room and told him he could not leave for Lagos on 15 October 1990 because of excess luggage and requested the Accused to carry the excess luggage - a trunk - to his brother in Singapore. The Accused agreed and Sola came with the trunk on 18 October 1990. Sola's brother, Hakeem Anifowoshe was staying at Pan Pacific Hotel in Singapore, so was he told.

The circumstances under which the trunk was given to the Accused were as follows:

1. Sola brought the trunk to the Accused's room and placed it on a rack near the mirror and later Sola carried the trunk to the taxi and placed it in the boot of the taxi. The Accused did not at any time carry or lift the trunk and had no idea about the weight of the trunk.
2. In the room, Sola opened the trunk and showed the Accused the ceramic items and handed him the key. The Accused saw for himself there was nothing but the ceramic in the trunk.
3. The favour was not for money. It was only from Bangkok to Singapore and the Accused was not carrying any luggage except his briefcase.
4. The Accused before his departure in Haadyai opened the trunk and put his suit and shirts in the trunk as if to clothe himself with possession of the trunk and its contents.
5. Sola gave him the key to the trunk. The key fell off from his pocket while travelling in the bus. A passenger pointed it to him. The Accused then fixed the key with his bunch of keys as if to further incriminate himself with the trunk.

The prosecution witness testified that the Accused shook his head and wept when the drug was retrieved from the sealed bottom of the trunk. And again when the trunk was cut open and the whole drug exposed the Accused shook his head. The Accused in his defence admitted that he twice broke down and explained that at the first instance he could not believe and had no knowledge the drug was there and he thought of his wife and kids whom he had told he was going to Singapore but not to Bangkok and whereas at the second instance he shook his head because of the big amount of drugs recovered from the trunk. The prosecution put it to the Accused that such conduct and behaviour of the Accused was a dramatization and a ploy to beguile his guilt, premeditated and conceived at Bangkok. I found that the facts leading to the Accused's possession of the trunk, his subsequent conduct of putting his suit in the trunk and putting the key to the trunk together with his bunch of keys which facts were borne out by the prosecution case, negatived such proposition. Furthermore, there was the unchallenged evidence that the Accused rolled in the trunk into the scanning machine. He opened the trunk at the counter for examination and showed the ceramic. Later in the room he took out the ceramic and emptied the trunk even after the dog attacked the trunk. I have considered perhaps the Accused was over

confident that the drugs were fool-proof and undetectable. Again I found such finding unsupported by the facts.

The Accused gave two cautioned statements, he made his first cautioned statement on 21 October 1990 one day after his arrest and his second cautioned statement on 26 October 1990, six days after his arrest. The 1st statement was admitted during the case for the prosecution at the instance of the defence. The 2nd statement was retracted by the defence when the prosecution sought to admit it during the case from the defence. I held a *voir dire* and after hearing the prosecution witnesses and the Accused in the enquiry I concluded that the making of the statement appeared to me to have been caused by inducement both from the recording officer and another customs officer present throughout the session. I so concluded because there appeared to be some form of an investigative enquiry into the return ticket Haadyai-Singapore-Haadyai found in the Accused's possession. The recording officer was specifically asked to enquire about the ticket from the Accused. The recording officer had the ticket and the voucher with him at the time. The recording officer admitted asking 38 questions in the cautioned statement. Perhaps it was true that the Accused did not volunteer the statement but rather that he was induced into answering the questions put to him which were allegedly to correct the previous untrue statement. Moreover, I tend not to disbelieve the Accused that he was made to feel comfortable, by being offered a cigarette and told that he was lucky to be arrested by the customs and not by the police. The Accused's mental state, unlike in the earlier statement was prone to a suggestion to tell the truth and perhaps be released. It was easier said than done and that I found it uncomfortable to accept that the other customs officer sat there for 3 hours doing nothing, saying nothing except to bear witness to the making of the cautioned statement. Besides the above reasons I had also considered the other grounds submitted by learned defence Counsel and the reply by the learned Deputy Public Prosecutor. Finally I concluded and rule that the Accused second cautioned statement was inadmissible. Whatever might have been said of the return ticket to Haadyai in the 2nd cautioned statement the Accused was cross-examined on it and the Accused explained that he knew he was issued a return ticket for US$200 but that he was told by the travel agent that he could not be issued a one way ticket to Singapore. He did not know why. When asked whether he showed the travel agent his return ticket from Singapore to Lagos he replied he did not. I think the Accused evidence may be accepted in this regard because the travel agent did not know the Accused had an onward ticket from Singapore to Lagos and issued a return ticket for otherwise in case of refusal of entry into Singapore it became Thai Airline's responsibility.

Lastly, I also considered the Accused defence in the light of his cautioned statement. I found both statements impeccably on all fours. He described where, when and how he received the trunk from Sola Anifowoshe and his difficulty to get a flight to Singapore. He detailed the incidents at Bukit Kayu Hitam. His answers to the 58 questions in the statement did not depart in any material particular from his statement in Court. I believed the Accused was telling the truth. I found it more probable that he did not know of the drugs concealed in the sealed bottom of the trunk. He had rebutted the presumption of knowledge and possession of the drugs on a balance of probability. I therefore acquitted and discharged him of the charge. I ordered that his personal effects be returned to him and that the trunk and drugs destroyed.